

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LORI JACOBS,

Plaintiff,

vs.

WAL-MART STORES, INC., a Delaware
corporation,

Defendant.

NO.

COMPLAINT AND JURY DEMAND

Plaintiff Lori Jacobs alleges as follows:

PARTIES

1. Plaintiff Lori Jacobs resides in Jefferson County, Washington.
2. Defendant Wal-Mart is a Delaware corporation doing business in Port Angeles, Clallam County and in Sequim, Jefferson County, Washington.

JURISDICTION AND VENUE

3. This court has jurisdiction over Plaintiff's claims based on federal law (42 U.S.C. § 12101 et seq., and 29 U.S.C. § 2601 et seq.) under 28 U.S.C. § 1331, and has supplemental jurisdiction over Plaintiff's related state law claims under 28 U.S.C. § 1367.

1 13. The combination of these afflictions on Plaintiff's upper extremities,
2 specifically the resulting spasticity and lack of motor control, cause her to be unable to
3 perform injections on the general public.

4 14. Despite her disability, Plaintiff was capable of performing her job duties as
5 a Pharmacist with reasonable accommodation.

6 15. In summer 2016, Wal-Mart decided that all of its Pharmacists would have
7 to provide immunizations, including physically performing injections.

8 16. In response to this new job duty, Plaintiff provided a note from her
9 physician dated August 29, 2016, confirming that – due to her physical disabilities –
10 Plaintiff would not be able to perform injections on the general public.

11 17. Plaintiff requested that Wal-Mart accommodate her disability and it did so.
12 Plaintiff can perform all other services relating to immunizations other than the physical
13 act of injecting which is part of some immunizations, but not all. Plaintiff is able to
14 perform other parts of the immunization delivery process. These include, but are not
15 limited to, the following: identify persons with immunization needs, select appropriate
16 vaccines and identify timing and intervals, provide screening and identify valid
17 contraindications for vaccinations, educate patients about benefits of vaccines and
18 address common concerns, advise regarding vaccine preventable diseases, review and
19 describe potential adverse effects and reactions, and address potential follow up needed.

20 18. Wal-Mart was able to accommodate Plaintiff's disabilities, and Plaintiff
21 continued to work for the next year with accommodation and continued to successfully
22 perform her duties. When required, other employees were able to provide injections
23 involved with immunizations.
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1 19. On February 6, 2017, Plaintiff was called in by her supervisor, Cherie Hope-
2 Jurado, to participate in a call with another Wal-Mart management employee from the
3 Vision Department of Wal-Mart's Poulsbo store. During the call Plaintiff was informed
4 that she would be losing her job because of her inability to perform injections.

5 20. Following the call Plaintiff was upset and asked that her request for
6 reasonable accommodation due to her disability continue, so she could continue to work.

7 21. After receiving no response to her request that her existing reasonable
8 accommodation continue, Plaintiff contacted her supervisor for assistance. On February
9 13, 2017, Plaintiff's supervisor provided her with a letter dated February 6, 2017, stating
10 that there had been a final determination: her request for accommodation had been
11 denied and her employment would be terminated on April 15, 2017.

12 22. Plaintiff was shocked and left work in tears and went home extremely
13 distraught. She attempted to engage with Defendant to have it reconsider continuing her
14 accommodation which had worked successfully for the past year without undue hardship
15 to Defendant.

16 23. Defendant failed to engage in the interactive process, failed to respond to
17 her request, and terminated her employment.

18 24. Despite her ability to perform her pharmacist job duties with the
19 reasonable accommodation she had been provided for the past year, Defendant ignored
20 Plaintiff's appeal and refused to consider continuing the accommodation.

21 25. Plaintiff was qualified to perform all duties of her position, but required
22 reasonable accommodation with respect to the newly imposed duty of providing
23 injections.
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1 26. Defendant denied Plaintiff reasonable accommodation previously granted
2 and unlawfully and wrongfully terminated Plaintiff's employment in April 2017.

3 27. Following her termination, Plaintiff timely filed a charge of discrimination
4 with the EEOC, who issued a right to sue letter dated September 13, 2017. Plaintiff filed
5 this Complaint within 90 days following the receipt of the EEOC right to sue letter.

6 28. Defendant's unlawful and wrongful conduct was malicious, oppressive or in
7 reckless disregard of Plaintiff's rights, and was the proximate cause of injury and damage
8 to Plaintiff, including substantial economic and non-economic damages.
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10 **FIRST CAUSE OF ACTION**
11 **Violation of the Americans with Disabilities Act**

12 29. Defendant violated Plaintiff's rights under the Americans with Disabilities
13 Act, 42 U.S.C. § 12101 et seq., by failing to provide reasonable accommodation for her
14 disability and terminating her employment based upon her disability, causing damages to
15 Plaintiff.

16 30. Defendant is liable for all resulting damages sustained by Plaintiff as
17 allowed by law, including but not limited to, past and future wage loss, other economic
18 damages, emotional distress and other non-economic damages, and punitive damages.
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20 **SECOND CAUSE OF ACTION**
21 **Violation of Washington's Law Against Discrimination**

22 31. The conduct, acts, and omissions of Defendant constitute disability
23 discrimination by failing to provide reasonable accommodation for her disability and
24 wrongfully terminating Plaintiff because of her disability. Such acts, singularly and
25 collectively, are in violation of the WLAD.

26 32. As a direct and proximate result of Defendant's discriminatory conduct,
Plaintiff has suffered damages in an amount to be proven at trial. Pursuant to the WLAD,

1 she is entitled to recover all actual and compensatory, economic and non-economic,
2 special and general damages, as well as attorneys' fees and an offset to any negative tax
3 consequences.

4 33. Defendant violated Plaintiff's rights under the WLAD, RCW Chapter 49.60,
5 by failing to provide reasonable accommodation and terminating her employment based
6 on her disability, and failing to provide accommodation for her disability causing damages
7 to Plaintiff.
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9 34. Defendant is liable for all damages sustained by Plaintiff as allowed by law,
10 including but not limited to, past and future wage loss, other economic damages,
11 emotional distress, and other non-economic damages.

12 **JURY DEMAND**

13 Plaintiff demands a trial by jury in this matter.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff respectfully prays that this Court for the following relief:

16 1. Judgment for past and future economic damages in an amount to be
17 proven at trial.

18 2. Judgment for past and future non-economic damages in an amount to be
19 proven at trial.

20 3. Judgment for liquidated, exemplary, and/or punitive damages to the extent
21 authorized by law.

22 4. Injunctive relief, including but not limited to, reinstatement of employment,
23 as provided by state and federal law.

24 5. Prejudgment interest.
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8. For such other and further relief as the Court deems just and proper.

By Stephanie Bloomfield

Attorneys for Plaintiff